IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 357 of 1994

in

SPECIAL CIVIL APPLICATIONNo 4597 of 1981

For Approval and Signature:

Hon'ble MR.JUSTICE J.N.BHATT
and
Hon'ble MR.JUSTICE D.P.BUCH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT & 2

Versus

RM CHAUDHARY

Appearance:

MRS.SIDDHI TALATI A.G.P. for Appellants

MR.S.B. NANAVATY for Respondent.

CORAM : MR.JUSTICE J.N.BHATT
and
MR.JUSTICE D.P.BUCH

Date of decision: 17/02/2001

C.A.V. JUDGEMENT

(Per : MR.JUSTICE D.P.BUCH)

1. The appellants above named have preferred this Letters Patent Appeal under clause 15 of the Letters Patent challenging the judgment and order dated 10.2.1994 recorded by the learned Single Judge in Special Civil Application No.4597 of 1981 under which the Learned Single Judge allowed the said writ petition of the respondent herein and quashed and set-aside the Orders at annexure 'A', 'B' and 'C' to the petition, which related to removal of the respondent from Government Service. The learned Single Judge also directed to reinstate the respondent in service with 50% back wages. The facts of the case may be, briefly stated, as follows :-

2. The respondent was working as P.S.I. in the State Traffic Branch, Surat, in the year 1973. According to the case of the department, the respondent remained absent from duty on 16.3.1973, and 17.3.1973 without obtaining any permission from competent authority. It was further alleged against him that he made a wrong statement to the Dy.S.P. that he was sick, and therefore, had approached Dr.Patel for his treatment. It was further alleged against him that he made another false wrong statements before Dy.S.P. that on his return from Doctor on 16.3.1973, he learnt from his wife that Dy.S.P. Shri Rana had gone to his residence and therefore he (the respondent), had gone to see Shri Rana and had explained to him the circumstances showing his absence. It was further alleged against the respondent that he had made wrong entries in his weekly diary that from 6.00 a.m. to 9.15 a.m. on 16.3.1973, he had checked vehicles and had done office work from 9.15 hours. It was further alleged against him that he also made false entries in the weekly diary that he had done office work from 11.00 a.m. to 6.00 p.m. on 17.3.1973. On the aforesaid set of charges, chargesheet was issued to and served upon the respondent. An enquiry was conducted against the respondent. The enquiry officer submitted his report and thereafter the D.S.P. found that some addition was necessary, therefore he added his own summing up to the report of the enquiry officer and submitted the enquiry report and the summing up to the Deputy Inspector General of Police, Baroda range at Baroda on 11.7.1977. The said authority undertook remaining process. The summing up and the enquiry report were supplied to the respondent and after hearing the

respondent, the said authority found that the charges against the respondent were duly proved. Accordingly, the said authority passed an order of removal of the respondent from Government service. The appeal and the Revision Application filed by the respondent against the said order came to be dismissed.

3. Feeling aggrieved by the aforesaid orders of his removal from Service, the petitioner preferred Special Civil Application No.4597 of 1981. The said order of removal of the respondent was challenged on various grounds. The learned Single Judge has observed in his judgment that a reasonable opportunity of hearing was not given to the respondent; that the D.S.P. had recorded his summing up behind the back of the respondent; that the D.I.G. had not assigned reasons for accepting the reasons and findings arrived at by the Presiding Officer and that there was delay in issuance of charge sheet. It was further observed that certain documents required by the respondent were not supplied to him. It was further observed that punishment of removal from service was very harsh.

4. On the aforesaid findings, the learned Single Judge was pleased to allow the petition and to quash and set aside the orders of removal of the respondent from the Government Service. The learned Single Judge further directed reinstatement of the respondent in service with 50% back wages from the date of removal till date of reinstatement.

5. Feeling aggrieved by the aforesaid judgment and order of the learned Single Judge, the appellants abovenamed have preferred this appeal before this court under the provisions contained in Clause 15 of the Letters Patent. It has been mainly contended here that the learned Single Judge has erred in holding that reasonable opportunity was not given or that the D.S.P. Baroda, had recorded summing up behind the back of the respondent; that D.I.G. has not assigned any reasons for accepting the report of the enquiry officer, that there was delay in holding the enquiry and that the documents were not supplied to the respondent and that the punishment was very harsh. It has also been submitted that the learned Single Judge has committed an error in deciding the above issues against the appellants. It is therefore prayed that the present appeal may be allowed and the judgment and order as well as the aforesaid findings of the learned Single Judge be quashed and set aside.

6. On receiving the appeal, notice was issued at the first instance. Thereafter an order was passed for admitting the appeal. The respondent was duly served and as per the daily board, Ms.Bhavnani was appearing for the respondent. Thereafter it was noticed that Mr.S.B.Nanavaty was also appearing on behalf of the respondent. Therefore, their names were notified on the board. Both of them did not appear and therefore with a view to provide an opportunity to them to appear and to defend and to argue the matter on behalf of the respondent, dictation and pronouncement of judgment was deferred after the conclusion of the argument of learned A.G.P. Mrs.Talati. None appeared thereafter also and therefore this being the last working day before winter vacation and this being the last working day for this Bench, we find it just and proper to dictate and pronounce the judgment in this matter which is already argued by Mrs.Talati long back. We therefore do not have an advantage of hearing the arguments of learned advocate for the respondent. Mrs.Talati learned A.G.P. arguing the matter on behalf of the appellants has argued the matter at length and has taken us through the record of this appeal. It is her contention that the learned Single Judge has committed serious error in coming to the aforesaid findings recorded by him while allowing the aforesaid writ petition of the respondent. It has been argued by Mrs.Talati that full opportunity was given to the respondent at all stages by the enquiry officer and no such grievance was made by the respondent before the authority in appeal and revision that an opportunity of hearing was not given to the respondent at a particular stage.

7. We find that so far this submission is concerned, it has substance and force of law and fact. So far the enquiry proceedings are concerned Mrs.Talati has taken us through the report of the enquiry officer and on going through the said report we find that it cannot be said that reasonable opportunity was not provided to the respondent to defend his case at the enquiry or to meet with the charges levelled against him in the said enquiry. Therefore on this point we are unable to agree with the findings of the learned Single Judge.

8. It has then been submitted by Mrs.Talati that so far D.S.P. Baroda is concerned he has recorded his summing up upon the report of the enquiry officer with a view to brief the D.I.G. as to the real facts emerging from the record. Now this summing up was recorded by the D.S.P. Baroda and it is alleged that the respondent was not heard before recording the said summing up by the

D.S.P. Baroda.

9. The learned Single Judge has found that this was done behind the back of the respondent and hence it was not legal. We have given our thoughts to this aspect and to the arguments of the learned A.G.P. also. We have also considered the reasoning adopted by the learned Single Judge for arriving at the said finding. However, we find it difficult to agree with the findings of the learned Single Judge on this point. On the contrary we find that so far D.S.P. Baroda is concerned he simply forwarded the report of the Inquiry Officer alongwith his summing up to the D.I.G. Baroda range, Baroda who received the enquiry report of the enquiry officer and the summing up of the D.S.P., Baroda and considered the same and then he provided copies thereof to the respondent with a view to provide an opportunity to the respondent to know their contents and then to submit his explanation to the enquiry report as well as to the summing up of the D.S.P. Once the summing up of the D.S.P. was put to the notice of the respondent it cannot be said that there was violation or infringement of principles of natural justice.

10. We are of a considered opinion that D.S.P. Baroda was not required to hear the respondent before recording and forwarding his summing up. At the same time when the D.I.G. Baroda range, Baroda had supplied copy of the summing up of the D.S.P. Baroda to the respondent then in that event requirements of principles of natural justice must be considered to have been satisfied. It has to be seen that the D.S.P. Baroda had not entered into further inquiry against the respondent. He simply looked into the report of the enquiry officer and the evidence produced before the enquiry officer. On verifying this material, he found that enquiry officer was not right in holding that some of the charges were not proved against respondent. Therefore he recorded his own findings on the said charge, saying that even the said charge has also been proved against the respondent. No new matter or material, extraneous to the material before the enquiry officer, was considered by the D.S.P. Baroda, while recording and forwarding his summing up. We are of the view that there was no violation or infringement of principles of natural justice committed by D.S.P. Baroda, by not hearing the respondent before recording and forwarding the said summing up.

11. The learned Single Judge has also found that D.I.G. had not assigned reasons for accepting the report of the enquiry officer and summing up of the D.S.P. Here

we find that D.I.G. had with him the summing up of the D.S.P. Therefore when the charges have been held to be proved by the enquiry officer, findings and reasoning were recorded by the enquiry officer for the said charges. With respect to other charges, the summing up recorded and forwarded by the D.S.P. Baroda was available with the D.I.G. Baroda range, Baroda. Therefore while agreeing with the positive findings of these two officers and while holding that all the charges levelled against the respondent were proved, it could not be said that the D.I.G. did not apply his mind and he did not have adequate material for arriving at the said findings. Once he finds that the reasons recorded by the enquiry officer for holding the respondent guilty for some of the charges, levelled against the respondent were acceptable then it was not necessary for him to write a detailed and reasoned judgment for accepting that part of the report of the enquiry officer.

12. In the same way when he accepted the summing up of the D.S.P. Baroda for holding the respondent guilty for the remaining charge, it was not necessary for him to record a detailed and reasoned judgment for holding the respondent guilty for the remaining charge since he accepted the summing up of the D.S.P. In other words D.I.G. Baroda range, Baroda, accepted some of the findings of the enquiry officer and the findings of the D.S.P. Baroda for holding the respondent guilty for all the charges levelled against the respondent. It is well settled that when a higher authority substantially agrees with the lower authority then it is not necessary for the higher authority to record a detailed and elaborate reasoned judgment for accepting the said findings or for confirming the said findings of the subordinate officers. Here the D.I.G. accepted and confirmed the findings of the enquiry officer on some charges and thereof the D.S.P. on remaining charges, and therefore, he was expected to write a detailed and reasoned judgment for holding the respondent guilty for all the charges levelled against him. This aspect of the case does not appear to have been properly dealt with by the learned Single Judge. Therefore, with respect to him we are unable to confirm the said findings of the learned Single Judge. We are of the opinion that the D.I.G. Baroda range, Baroda had sufficient material with him for confirming the said findings of the enquiry offices as well as of the D.S.P. Baroda. Therefore there is no question of violation of principles of natural justice.

13. It has further been observed by the learned Single Judge that there was delay in commencement of

enquiry proceedings. This can be gathered in para 7 of his judgment. Now the appellants above named have explained before the Learned Single Judge that there was absence of the respondent in March, 1973, then he made wrong statement before Dy.S.P. in March, 1974; then there was some sort of preliminary enquiry, and therefore, the charge sheet was given in April, 1975. Now when preliminary enquiry is there, then in that event matters are likely to be delayed. It is true that detailed explanation does not appear to have been set out for explaining the delay. However, when it has been broadly made out and when it has been particularly shown that the delay was caused on account of the aforesaid aspect of the case, then in our opinion, it cannot be said that the delay was such as to prejudice the case of the respondent. It is to be noted that no prejudice has been shown or alleged to have been caused to the defence of the respondent on account of said fact. Delay in all cases cannot be treated to be fatal to the case of department. We feel that when no prejudice has been alleged or shown to have been caused to the defence of the respondent, then in that view of the matter, delay cannot be treated to be fatal to the case of the appellants. It is more so when the regular departmental enquiry was preceded by a preliminary enquiry which would take some time for its conclusion. The department cannot be prevented from holding preliminary enquiry. On the contrary this was done with a view to see that delinquent was not harassed unnecessarily. Therefore departmental enquiry was ordered after getting some material through the preliminary inquiry. Therefore it cannot be said that the delay in commencement of enquiry was not explained. It also cannot be said that the delay caused in commencement of enquiry is fatal to the case of appellants. In other words, we are unable to subscribe the aforesaid findings of the learned single Judge that delay was fatal to the case of the respondent.

14. It has further been observed by the learned Single Judge that the respondent was not supplied with the copies of the relevant documents including weekly diary. He has also observed that respondent was advised to attend the office and inspect the documents. The learned Single Judge has also observed that this was not sufficient and it was necessary for the department to supply copies of the documents. Now we find that even if the learned Single Judge was right in observing that it was not enough for the appellants to direct the respondent to inspect the documents from the office concerned, then also there is nothing further to say that the respondent approached the office, inspected the

documents and then found it to be inconvenient to proceed with the enquiry without having copies thereof. We do not find from the record that the respondent had approached the competent authority saying that the above opportunity was not sufficient and he could not defend his case in absence of documents. It was not the case of the respondent at any point of time, that despite his request, documents were not supplied to him and therefore he could not effectively defend his case and there was consequent violation of principles of natural justice. In some cases delinquent can be asked to inspect the documents also. In that event, it would be duty of the delinquent to inspect the documents. He could also make notes from the documents so inspected by him. If after inspection of documents; if the delinquent still desires copies he would never be barred from making second application for supply of copies of documents. This does not appear to have been done by the respondent. In that event, it cannot be said that reasonable opportunity was not offered to the respondent by non supply of copies of the documents. It has also not been found from the record that the opportunity to inspect the documents was inadequate. There is nothing on record to show that second request was made by the respondent for supply of copies of documents saying that inspection of documents was not enough. In the aforesaid facts and circumstances we find that the respondent cannot be said to have been deprived of reasonable opportunity by non supply of documents as aforesaid. Therefore the enquiry proceedings cannot be quashed and set aside on this ground. It therefore cannot be said, even on this aspect of the case, that reasonable opportunity was not provided to the respondent and there was violation of principles of natural justice.

15. It has been lastly contended that punishment of removal from service imposed on the respondent is extremely harsh and not commensurate with the magnitude of the delinquency committed by the respondent. Here we find that this was not a case of absence from duty for a long period. A couple of days i.e. 16.3.1973 and 17.3.1973 the respondent remained absent and apart from the absence, the respondent made false statement before the Dy.S.P. showing that he was sick on the said days and therefore he was not available on duty on those two days. The said aspect was found to be false since the Doctor named by the respondent positively said that respondent did not approach him on 16th and 17th March, 1973. Thus, the say of the respondent stood contradicted by the statement of Dr.Patel and another aspect of the case is that he made false entries in the diary showing

that he did some work on 16th and 17th March, 1973. If he was sick and had approached Dr.Patel on those two days than in such a case, he could not be available on duty and he could not have worked at all. So on one hand, he had came out with a case that he was sick on those two days and then he made entries to show that he worked on those two days. Moreover, on actual verification on the spot he was not found on duty on those two days. Therefore, even the entries in the diary could not be treated to be true. The respondent was admittedly working as Police Sub Inspector at relevant point of time. P.S.I. is an important police officer at a grass root level. He could not run away from his duty as per his choice. Even if he was sick and was unable to function, he could have sent a word to his superior officer that he was going to take treatment. He could have atleast put up a word to his colleague that he was leaving for treatment. He has not done so. On the contrary, when physical verification was made and when he was found absent on those two days he came out with wrong entries in the diary. The respondent belongs to a disciplined force, wherein false entries in the diary would be very serious misconduct for all purpose. A person can come with a complaint at any point of time. It may be of a very serious nature. P.S.I. is always an important link of the state. Many functions are to be carried out by him. Many duties are to be discharged by him. Therefore, if he is not available on duty during duty hours, then the people may also be put to great inconvenience. It is more so when the respondent left the place of duty without a word to his colleague or to his superior. Moreover, when the things were brought to the light he came out with false statements to the Dy.S.P. The said statements were proved and found to be false to the knowledge of the respondent on account of the statement made by Dr.Patel. Therefore, this was not case of mere absence from duty but it was also coupled with so many other aspects of the case and therefore considering the fact of the charges levelled against the respondent it cannot be said that the punishment inflicted on the respondent was harsh. Therefore we find that the learned Single Judge has not properly appreciated the aspect of quantum of punishment also.

16. After all the quantum of punishment is a matter of discretion of the disciplinary authority. The appellants have come out with the past records and it was noticed that the respondent had certain adverse past records also. The disciplinary authority therefore was also required to go into the said aspects of the case also while selecting the punishment against the

respondent. The court can interfere with the quantum of punishment only when the punishment is very harsh, considering the nature of charge levelled and proved against the delinquent. Therefore looking to the charge levelled and proved against the respondent and looking to the past records of the respondent it could not be said that the punishment awarded by the appellant to the respondent was very harsh. The aforesaid aspects have been made amply clear by the affidavit of Mr.P.K.Bansal, Dy. Inspector General of Police before the learned Single Judge. It is to be seen that in para 11 of his affidavit he has stated that during the tenure of service the present respondent was awarded 86 punishment including one major punishment of reducing his pay from Rs.150/- per month to Rs.145/- per month for a period of two years and the suspension period was also treated as such, during the period between 1967-1968. Therefore it is clear that the respondent had 86 previous punishments at his credit and this was considered by the appellant while selecting the quantum of punishment. In that view of the matter we are of the view that the punishment awarded to the respondent could not be treated to be harsh. When a person has been softly and leniently dealt with in the past and when no improvement was shown by him, then in that case, the said softness cannot be extended to him time and again. The respondent had full opportunity to improve his conduct but he has failed to do so. Therefore we find that this is not a case wherein the court should interfere with the discretionary powers of the appellants with respect to the quantum of punishment awarded to the respondent.

17. Viewing the matter, from all angles, we find that the learned Single Judge was not right in allowing petition and in quashing the impugned order of removal from service. We are of the considered opinion that there was sufficient material and evidence before the enquiry officer, before the D.S.P., as well as before the D.I.G. to hold respondent guilty for all the charges levelled against the respondent and therefore the D.I.G.. Baroda range at Baroda was perfectly justified in holding the respondent guilty for all the charges levelled against the respondent. We also find that the punishment awarded to the respondent could not be treated to be harsh. Considering the nature of charges levelled and proved against the respondent we are also of the opinion that the DIG was further justified in looking at the past records of the respondent showing atleast 86 previous entries including one major punishment awarded to the respondent. In short, we are of the view that the learned trial Judge has erred in deciding the entire

petition against the appellants and in favour of the respondent. On the other hand we also record our finding that there was no violation of principles of natural justice. We confirm the findings and reasonings of D.I.G. Baroda, holding the respondent guilty for all the charges levelled against the respondent and awarding the aforesaid punishment of removal from Government Service. In the result we find that the judgment and order recorded by the learned Single Judge against the respondent, are illegal and deserves to be quashed and set aside.

18. In the result we allow the present appeal and set aside the judgment and order recorded by the learned Single Judge. We direct that Special Civil Application No. 4597 of 1981 be dismissed. Having regard to the facts and circumstances of the case there shall be no order as to costs.

(J.N.Bhatt, J).

(D.P.Buch, J).

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